

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:99-CR-49-02-F1
No. 7:03-CV-24-F

JAMES LARRY BELLAMY,
 Petitioner,

 v.

UNITED STATES OF AMERICA,
 Respondent.

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ORDER

On March 31, 2009, the undersigned entered an order [DE-254] denying James Larry Bellamy's § 2255 motion [DE-222], and allowing the Government's motion to dismiss [DE-228]. Judgment [DE-255] thereon was entered on the same date.

Bellamy appealed [DE-259] the order on July 27, 2009, and this court denied his motion for certificate of appealability [DE-262]. On December 30, 2009, the Fourth Circuit Court of Appeals issued its unpublished opinion [DE-266] also denying a certificate of appealability and dismissing Bellamy's appeal. Judgment thereon issued on January 5, 2010 [DE-267].

On February 5, 2010, Bellamy filed a motion for "Relief from a Judgment or Order Under Rule 60(b)(3), (d)(3), FED. R. CIV. P." [DE-272], in which he alleges that he has evidence that the prosecutor and federal agents committed a fraud on the court in the trial against him. Specifically, he alleges that the prosecutor and the case agent lied on four different occasions in representing that Bellamy consented to a search of his residence when, in fact, he had ordered them to leave. His brother and co-defendant Claude filed the same motion on January 25, 2010 [DE-268], and it was denied by order [DE-269] the following day.

The undersigned denied Bellamy's February 5th Rule 60(b) motion without prejudice for him to seek authorization from the Fourth Circuit Court of Appeals to file a successive § 2255 motion. *See* [DE-273]. Bellamy appealed that order which was affirmed by unpublished opinion in *United States v. Bellamy*, No. 10-6398 (4th Cir. June 28, 2010) [DE-282] (dismissing the appeal and denying a certificate of appealability. The appellate court also construed Bellamy's notice of appeal and informal brief as an application to file a second or successive § 2255 motion, and denied motion that motion as well. *See id.*

The instant motion, styled, "Motion for Relief from a Judgment or Order Federal Rules of Civil Procedure 60-B(3)(4)" [DE-288], like the similarly-named motion of February 5, 2010 [DE-272], again claims that the prosecuting Assistant United States Attorney knowingly presented the perjured testimony of the FBI case agent to state and federal magistrates in order to obtain search warrants, to the federal grand jury and to the petit jury at trial. He seeks relief from his conviction and sentence on grounds his Fourth and Fifth Amendment rights were violated.

For the same reasons set forth in this court's February 8, 2010 order [DE-273], and the Fourth Circuit's June 28, 2010, opinion [DE-282], Bellamy's Motion for Relief from Judgment [DE-288] is DENIED. A certificate of appealability also is DENIED.

SO ORDERED.

This, the 21st day of July, 2010.



JAMES C. FOX
Senior United States District Judge